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DATE FILED: 14 JUN 2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EFFREN G. DURASNO,

Plaintiff,

-against-

DIAMONDS INTERNATIONAL,

Defendant.

----------X

10 Civ. 6303 (LTS)(HBP)

REPORT AND RECOMMENDATION

MEMO ENDORSED

RECEIVED
MAY 11 2011
CHAMBERS OF LAURA TAYLOR SWAIN

PITMAN, United States Magistrate Judge:

TO THE HONORABLE LAURA TAYLOR SWAIN, United States District Judge,

The pro se plaintiff commenced this action on August 23, 2010 by filing a summons and complaint. My review of the file in February, 2011 disclosed that no proof of service of the summons and complaint had ever been filed and it appeared that the summons and complaint had not, in fact, been served. Accordingly, I issued an Order to plaintiff on February 24, 2011 directing that plaintiff show cause on or before April 25, 2011 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day time limit established

SO ORDERED.

NEW YORK, NY
June 13, 2011

LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

The within Report and Recommendation, to which no objection has been received is hereby adopted. The action is dismissed without prejudice pursuant to FRCP 4(m), and the Clerk of Court is respectfully directed to close the case. The Court certifies pursuant to 28 USC § 1915(a)(3) that any appeal from this order would not be taken in good faith.

by Rule 4(m), Fed. R. Civ. P. Specifically, my February 24, 2011 Order provided:

> Despite the fact that Rule 4(m), Fed. R. Civ. P., requires that the summons and complaint be served on all defendants no later than 120 says after the commencement of the action, according to the Court's records, the defendant has not yet been served. Accordingly, pursuant to Federal Rule of Civil Procedure 4(m), it is hereby
>
> ORDERED that plaintiff has until April 23, 2009 either to complete service of the summons and complaint on the defendants or to show good cause why such service has not been made. Failure to complete service or to show cause on or before April 25, 2011, **will** result in the issuance of a Report and Recommendation recommending the dismissal of this action.

(Emphasis in original.)

A copy of my February 24 Order was mailed to plaintiff at the address provided when he commenced this action -- the only address plaintiff ever provided to the Court. It has not been returned as undeliverable.

To date, plaintiff has not filed proof of service, has not explained why service has not been completed and has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend sua sponte that this action be dismissed

on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Laura Taylor Swain, United States District Judge, Room 755, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Swain. FAILURE TO OBJECT WITHIN TEN (10) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair

Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
May 10, 2011

Respectfully submitted,

HENRY PITMAN
United States Magistrate Judge

Copy mailed to:

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